

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, JULY 20, 2006**

CALL TO ORDER

Ellen Gennrich, Vice-Chairperson, called the meeting to order at 12:00 p.m.

Commission	Gary Goodchild	Ellen Gennrich	Bonnie Morris
Members Present:	Walter Baade	Walter Kolb	Pat Haukohl
	Betty Willert	Bob Hamilton	

Commission
Members Absent: None

Staff	Richard Mace, Zoning Manager	Deborah Price, Corp. Counsel
Members Present:	Dale Shaver, Director	Robyn Schuchardt, Corp. Counsel
	Sandy Scherer, Senior Planner	Jason Fruth, Senior Planner
	Mary Finet, Senior Planner	Kathy Brady, Secretary Supervisor
	Elfriede Sprague, Clerk III	Peggy Tilley, Land Use Specialist

Guests Present:	Gary Gasper	Don Wilton	Todd Whittaker
	Michael Sabourin	Brian Melter	Robert Rowlands
	Kevin Dittmar	Jason Dare	Lisa Lerch
	Todd Whittaker		

CORRESPONDENCE: None

MEETING APPROVAL: None.

MEETING DATES:

The following dates were scheduled for the November and December 2006 Commission meetings.

- November 2, November 16, December 7, and December 21, 2006

MINUTES:

Mrs. Willert moved, seconded by Mr. Goodchild, and carried unanimously, for approval of the June 29, 2006, Minutes.

PUBLIC COMMENT:

Mrs. Gennrich asked if anyone from the audience wished to address the Commission? There being no one, she moved to the next item on the agenda.

SCHEDULED MATTER

- **12:00 p.m. "Considering Wildlife Habitat When Land Use Planning" by Gary Casper, Casper Consulting**

Mr. Casper gave a Power Point presentation outlining a GIS program, which will be available later this year that will help to identify wildlife habitats, areas for restoration, potential and existing wetlands and their relationship to land use planning. The program has the potential of creating many different layers that could be incorporated into our existing GIS programs. It would enable SEWRPC, the DNR, the County and several other agencies to make wiser and more cost effective choices when identifying land use issues. It was felt this is something the County could be interested in pursuing.

• 1:00 p.m. **Comprehensive Development Plan Update and Discussion of Conditions being placed on Waukesha County Development Plan Amendments, by Dale Shaver, Director**

Mr. Shaver explained the current progress for updating the Waukesha County Development Plan to the Commission. He indicated that updated information on Committee and Subcommittee Minutes, chapter text, maps, etc. is located on the Waukesha County Web page under the Department of Parks and Land Use.

Next, Mr. Shaver discussed the current procedure for the annual amendments to the Waukesha County Development Plan. He explained that an ongoing issue of concern is notification of adjacent property owners. Currently, on rezoning amendments, State law requires notification of landowners by insertion in a newspaper of a Class 2 Notice (two insertions, consecutive weeks). The Zoning Code states, however, that on rezonings, landowners within 300' of the parcel are to be notified by letter. However, notification is not required by Statute for plan amendments, which seems to pose a problem because the discussion at those particular meetings involves a potential change in the use of the land. By the time an individual would want to respond to a rezoning of property, the Waukesha County Development Plan would have already been changed. Based on those concerns, for the Year 2007 Waukesha County Development Plan Amendments, the process would be changed by our County, and all property owners within 300' would be notified by regular mail. The Commission indicated they too were concerned and were pleased to hear of the new notice process.

Next, the discussion focused on conditions being placed on Development Plan Amendments. Mr. Shaver said that currently, when an amendment is adopted with conditions regarding design issues (access, stormwater, environmental corridor protection, well placement, sanitary permits, etc.) in order to make any revisions, the petitioner must wait a year (until the next annual amendments) to refine those conditions. He suggested, instead of placing formal conditions on Development Plan Amendments, the site condition concerns of the Commission could be listed in the motion of the Minutes for that particular amendment.

Mrs. Haukohl expressed concerns that without the addition of conditions to some of the amendments she would not agree to the change in category, unless the issues would be listed in the Staff Recommendation for the rezoning of the property. Mr. Shaver said, if the request is not consistent with the overall planning standards of the Plan, the Staff would recommend denial of the request. Mrs. Haukohl asked when the conditions could be applied? Mr. Shaver replied, if the plan amendment doesn't require a rezoning, a Subdivision Plat or a Certified Survey Map, the County would not review it. However, if the property is consistent with the zoning district, the property would need to be subdivided and conditions could be added at that point on the Plat. Mr. Mace pointed out there are some Towns where a rezoning is not required and condominiums are not seen by the County. Mrs. Haukohl said, she would not be in favor of approving land use plan amendments regarding potential condominium developments because conditions may not be able to be added. Mr. Shaver reminded the Commission that the Staff, whether at the County or Town level would handle the matter appropriately. Mrs. Haukohl said many of the issues surrounding condominiums are significant. Mrs. Gennrich said if someone felt strongly against a certain issue on a plan amendment, that person could vote against it. Mr. Shaver said design work should not be addressed at the plan amendment level. Attorney Price reminded the Commission that stormwater issues would be addressed with the Land Resources Division. Mr. Shaver reiterated, the Staff Report and Recommendation for Land Use Plan Amendments is very thorough in identifying issues of concern.

Mr. Shaver also suggested the Resolution for the Development Plan Amendments be written in the affirmative. A tracking sheet would be attached to the Resolution indicating the action and votes of the Commission/Committee's and the Staff's recommendation on each amendment.

Attorney Price presented her legal opinion (Exhibit "A") on imposing conditions on amendments to the Waukesha County Development Plan. She explained there are no Statutes or case law in the State of

Wisconsin that specifically allows or prohibits conditions being added. Caution must be taken when imposing conditions at the Development Plan Amendment level and any review by a court must be substantiated. She also cautioned, not to invade the zoning power of the Town, not infringe upon the authority of other governmental entities and use good judgment

- **1:45 p.m.** **SCS-999 Donald Wilton, Town of Eagle, Section 10**
Part of the SE ¼ of Section 10, T5N, R17E, Town of Eagle. More specifically, the property is located on the east side of S.T.H. 67
Request: Approval of a lot without direct access to a public road (matter referred back to the Planning and Zoning Division Staff at the June 15, 2006, meeting).

Mr. Mace presented the “Staff Memorandum” dated June 15, 2006, and made a part of these Minutes. He pointed out the location of the property on the east side of S.T.H. 67, southeast of the intersection of Wilton Road and S.T.H. 67, Town of Eagle on the aerial photograph and stated the petitioner is requesting approval of a lot without direct access to a public road.

Mr. Mace stated the matter had been referred to Corporation Counsel at the June 15, 2006 meeting for a legal opinion to determine whether the Commission had the right to deny Mr. Wilton’s request and if they did, what would be the consequences. Mr. Kolb felt the request should be approved because the surrounding lots have already been approved and it would therefore be appropriate to approve the creation of this Certified Survey Map. He disagreed that approving it would “not be in the public’s interest”. Robyn Schuchardt, of Corporation Counsel responded to the Commission’s referral. She indicated the Shoreland and Floodland Protection Ordinance, Section 3 (D)(2), sets forth certain conditions for approval which must be met regarding minimum average lot width and access requirements. It was her opinion that Mr. Wilton has met these conditions. If the Commission chooses to deny the request, Mr. Wilton could appeal the decision and it would become the subject of a lawsuit. Mr. Goodchild noted the lot does have access to S.T.H. 67 via an existing easement.

Mr. Kolb moved, seconded by Mr. Goodchild and carried with 6 yes votes to put the request back on the table (Mrs. Haukohl voted “No”).

Mr. Wilton stated that after listening to a recording of the July 15th meeting he had the following comments to make:

- It seems Mr. Mace has had an “axe to grind” with him for the last 15 years. He accused him of lying at the meeting.
- Several times the Commission made derogatory remarks about him.
- He has counted up to 60 flag lots in the Town of Eagle.
- He cannot get public access to S.T.H. 67 from the D.O.T., therefore Staff’s subdivision proposal is undoable. He has written proof from the D.O.T. stating their denial. To develop this land his only alternative is a C.S.M. and his lots far exceed the zoning requirements.
- He is within the law to divide his land in this manner and does not want any further discrimination against him.

After further discussion Mr. Kolb moved, seconded by Mr. Goodchild and carried with 6 yes votes for approval (Mrs. Haukohl voted “No”). The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

• **2:00 p.m.** **Appointment/Report of Nominating Committee and Election of Officers**

Request: Report of Nominating Committee and Election of Officers for the Park and Planning Commission (postponed from the June 29, 2006 meeting).

Mrs. Gennrich stated she appointed Mrs. Willert, Mr. Goodchild and Mrs. Haukohl to serve as the Nominating Committee to present proposed nominations for the next Commission year. The report of the Nominating Committee selected Mrs. Haukohl as Chairperson, Mr. Goodchild as Vice Chairperson and Mrs. Willert as Secretary.

Mr. Kolb presented a nomination for himself as Chairman from the floor.

Mr. Baade asked if there would be a ballot if Mr. Kolb were also nominated? Mrs. Willert commented a written ballot was not necessary. Mrs. Morris said it was a procedure determined by the Committee.

There was no second and the motion failed.

Mr. Goodchild asked for an explanation of the nominating procedure. Mrs. Gennrich answered annually in July, the Commission has a nomination of officers per the By-Laws. The officers are elected annually. She expressed concern that the County Board has their election in April and the Commission has theirs in July; therefore if the Commission loses a member due to that member losing their County Board seat, a new replacement Commissioner is not present for some time and if appointed may not be familiar with the nominees. She will agendize this issue at a future meeting to discuss changing the election dates. A copy of the By-Laws was also requested for the next mailing.

Mr. Kolb commented he felt in the years past, it was policy to rotate the officers. He also understood if a Commission member is Chairperson of Land Use, Parks and Environment Committee (LUPE), it would be considered a conflict of interest to also be Chairperson of the Park and Planning Commission, however he is no longer chair of LUPE and he feels there is a discriminatory practice among the Commission when nominating officers.

After discussion, the report to accept as officers Mrs. Haukohl as Chair, Mr. Goodchild as Vice Chair and Mrs. Willert as Secretary passed with 6 yes votes. (Mr. Kolb voted "No") effective the next scheduled meeting.

• **(Todd Whittaker and Michael Sabourin) Town of Merton, Section 30**

Mr. Mace presented the "Staff Memorandum" dated July 20, 2006, and made a part of these Minutes. He pointed out the location of the property at W332 N6211 C.T.H. "C" in the Town of Merton on the aerial photograph on Moose Lake and stated the petitioners are requesting approval for retaining walls within 5 ft. of the lot line.

Mrs. Willert asked if there was a Letter of Acceptance from the neighbor Mr. Sabourin? Mr. Mace replied a Maintenance Agreement is required per Condition No. 10. Mr. Mace distributed photographs of the site and identified the lot as extremely narrow with a steep slope to the lake using the GIS topography feature. Mr. Whittaker stated the existing residence is slated to be torn down and a new residence erected. He will be closing on the purchase on Friday. The retaining walls are necessary between him and his neighbor because of the steep slopes and he has been granted variances for road setback, shore and floodplain setback, offset, floor area ratio, minimum floor area and open space requirements on October 26, 2005. Mrs. Haukohl commented she would like to ensure Land Resources has approved the Final Plans before any permits are issued.

After discussion, Mrs. Haukohl moved, seconded by Mrs. Morris and carried unanimously for approval, as conditioned in accordance with the "Staff Memorandum" with a modification to Condition No. 2 to now read:

- 2. The Waukesha County Land Resources Division shall review and approve the final plans (received 7/17/06) prior to the issuance of any permits unless Land Resources Division requires any alterations.*

The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **(Brian Melter) Town of Oconomowoc, Section 25**

Mr. Mace presented the "Staff Memorandum" dated July 20, 2006, and made a part of these Minutes. He pointed out the location of the property at W340 N6296 Breezy Point Road in the Town of Oconomowoc on the aerial photograph, four lots south of Okauchee Lake Yacht Club, and stated the petitioner is requesting approval for retaining walls within 5 ft. of the lot line.

Mrs. Morris stated the petitioner is near her daughter's home and excused herself from the vote as some may perceive this as a conflict of interest. Mrs. Gennrich asked what changed in the current Grading Plan as the original one specifically "prohibited" the construction of retaining walls? Mrs. Tilley clarified the original permit did not authorize the installation of any retaining walls, however at the time they were not proposed. Mr. Mace agreed to change the Staff Report verbiage to clarify the statement. Mr. Mace circulated the Landscaping Plan and pictures of the property for the Commission to view. He identified the location of the old house site and where the new house has been built, which is further back from the lake.

Mr. Melter detailed his plans for the Commission. He explained the home is long and narrow, with steep changes of grade to the lake. No variances are required from the side lot lines as he is 10 ft. from them. The proposed driveway will be about 120 ft. from the roadway to the edge of the garage. Mrs. Haukohl questioned the Drainage Plan piping system. Mr. Melter replied the piped runoff ends up lower than his residence and the neighbor's residence to a crushed gravel bed, approximately 70 ft. from the lake.

Mrs. Morris relayed a concern one of the neighbors stated to her regarding a retaining wall. They were concerned children could step off the 4 ft. retaining wall between the lots and hurt themselves. Mr. Melter replied the retaining wall at the point in question would only be about 2-1/2 ft. high. He commented he could put plantings along the wall on his property to help prevent any accidents. The Commission suggested if the neighbor had reservations about the safety of the retaining wall, they could also plant a buffer along their side.

After discussion, Mr. Baade moved, seconded by Mrs. Haukohl and carried with 6 yes votes for approval, as conditioned in accordance with the "Staff Memorandum" (Mrs. Morris excused herself from the vote due to a conflict of interest), The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

• **CS-1006 (Robert Rowlands) Town of Genesee, Section 12**

Mr. Mace presented the "Staff Memorandum" dated July 20, 2006, and made a part of these Minutes. He pointed out the location of the property on the northeast corner of Sunset Dr. (C.T.H. "DE") and Road DT in the Town of Genesee on the aerial photograph and stated the petitioner is requesting approval of the creation of a "flag" lot and the after-the-fact creation of a lot without direct access to a public road.

Mr. Mace identified the ingress/egress easement on the proposed CSM, which would serve Lot 1 and Lot 2. Mr. Goodchild questioned the intent of Outlot 1? Mr. Rowlands replied it was an access easement for the residence on the adjacent lot to the east and would eventually be deeded to that parcel. Outlot 1 will merge

with Lots 1 and 2 for road access; however there will be a tree line in the middle separating the lots. A Driveway Maintenance Agreement is required per Condition No. 6. Mr. Goodchild expressed concern about approving the request before the Town of Genesee does, as they may have more knowledge of the site and any problems that could be associated with the request. Mrs. Gennrich replied the Commission does occasionally approve flag lots before the Town; however they are usually conditioned to say "approved without prejudice". Mr. Mace said he would change the Staff Memorandum to add the condition stating such.

After discussion, Mrs. Haukohl moved, seconded by Mr. Goodchild and carried unanimously for approval, as conditioned in accordance with the "Staff Memorandum". The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

• **(Kevin Dittmar) Town of Oconomowoc, Sections 35 and 36**

Mr. Mace presented the "Staff Memorandum" dated July 20, 2006, and made a part of these Minutes. He pointed out the location of the property at W350 N5350 Road C, Town of Oconomowoc on the aerial photograph and distributed photographs of the site. He stated the petitioner is requesting approval for retaining walls within 5 ft. of the lot line.

Mr. Goodchild noted per Exhibit "A", the neighbors deck encroaches on Mr. Dittmar's land. Mr. Dittmar explained he currently rents the house with the encroaching deck and has purchased the adjoining property, which it encroaches on. His intent is to raze the existing home and build a new one with only minor changes to the footprint. He is aware of the encroachment and has no problems with it. There is load-bearing concrete under the deck and removing it would cause the deck to collapse. The proposed deck on Exhibit "B" that overlays the existing deck, has been eliminated from his proposal. He is requesting a retaining wall there instead, which is necessary to hold the neighbors deck back and for stabilization of his lot. Several existing walls will be eliminated and only necessary new ones, which will be about 6 ft. to 7 ft. long, will be constructed. The boardwalk along the lake was questioned. Mr. Dittmar stated it is located over the existing rip/rap and the deck will be removed.

After discussion, Mr. Kolb moved, seconded by Mrs. Willert and carried unanimously for approval, as conditioned in accordance with the "Staff Memorandum". The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

• **(David Gardener) Town of Oconomowoc, Section 30**

Mr. Mace presented the "Staff Memorandum" dated July 20, 2006, and made a part of these Minutes. He pointed out the location of the property at N56 W39760 Marks Road, Town of Oconomowoc on the aerial photograph and stated the petitioner is requesting an interpretation of the C-1 Conservancy boundary line which is provided for in the Zoning Code.

Mrs. Tilley explained the issue of the zoning district arose when Mr. Gardener applied for a loan and because of the zoning classification; he was having a hard time getting approval. Mr. Mace pointed out a large wetland area to the west on the aerial and noted the buildings in question are not in the wetland. The request is to determine that the buildings are not in the C-1 Conservancy District and the Staff has determined it is appropriate to do so based on soils, the topography maps and aerial photographs. Mrs. Tilley stated the Staff is not making a wetland delineation, they are suggesting the C-1 Conservancy District boundary be specifically located so the buildings are not in the wetland. Mrs. Haukohl asked if the petitioner could construct more buildings on the parcel? Mrs. Tilley replied a wetland boundary determination would be required to ensure he was 75 ft. from the wetland boundary if he were to propose more buildings.

After discussion, Mrs. Haukohl moved, seconded by Mrs. Willert and carried unanimously to amend the C-1 Conservancy District line, in accordance with the “Staff Memorandum”. The approval of this request, will allow the petitioner a reasonable use of his land and meets the intent and purposes of all County Ordinances.

- **Amendment to the Regional Water Quality Management Plan for the City of Muskego**

Mr. Mace presented the “Amendment to the Regional Water Quality Management Plan for the City of Muskego” dated June 2006, and made a part of these Minutes.

Mr. Mace indicated the purpose of the amendment is to include within the planned sewer service area certain lands located immediately adjacent to, but outside of, the currently adopted sewer service area to accommodate the anticipated development of land. The developable portions of the subject areas would accommodate approximately 241 housing units with a population of about 630 persons.

After discussion, Mrs. Willert moved, seconded by Mr. Baade, and carried unanimously, for approval in accordance with the “Regional Water Quality Management Plan for the City of Muskego”.

ADJOURNMENT

With no further business to come before the Commission, Mr. Baade moved, seconded by Mrs. Haukohl to adjourn at 3:48 p.m.

Respectfully submitted,

Pat Haukohl
Secretary

PH:es

Attachment: “Exhibit A”